

## 1. Historical development

- ○ The development of IHL as a first form of protection for the individual in international law
- ○ The changing structure of the protective regimes of IHL: from inter-State relations to protection of the individual against the State and armed groups

### See

- Chapter 2. III. 2. a), Passive personal scope of application: who is protected?, and Chapter 14. II. 1. a) Areas in which details provided by IHL are more adapted to armed conflicts

## 2. Sources

- ○ IHL as protection of (some) human rights in armed conflicts

### See

- Chapter 14. II. 1. a) Areas in which details provided by IHL are more adapted to armed conflicts

- ○ (Human rights-like) Fundamental guarantees of IHL for persons not benefiting from more favourable guarantees under IHL

## • 3. Universalism and cultural relativism

- ○ Law v. rights in IHL and human rights
- ○ Universality of humanitarian values

### See

- ○ Chapter 1. III, IHL and cultural relativism

- ○ IHL covering rights in all “three generations” of human rights

## • 4. Protected rights

- a. Right to life
  - Reference to IHL through the exception for lawful acts of war

### See

- Chapter 14. III, Implementation, Introductory text;
- Case No. 151, ECHR, Cyprus v. Turkey

- b. Prohibition of inhumane and degrading treatment
  - A state of necessity does not justify it, even in armed conflicts
- c. Right to personal freedom

**See**

- Case No. 138, Israel, Detention of Unlawful Combatants;
- Case No. 157, Inter-American Commission on Human Rights, Coard v. United States [Paras 42 and 45-59],
- Case No. 262, United States, President's Military Order

- Justification for the internment of prisoners of war

**See**

- Case No. 261, United States, Status and Treatment of Detainees Held in Guantanamo Naval Base [Parts C. and D.],
- Case No. 263, United States, Hamdan v. Rumsfeld

- ○ ■ Administrative detention of civilians in IHL

**See**

- Case No. 131, Israel, Cheikh Obeid et al. v. Ministry of Security;
- Case No. 157, Inter-American Commission on Human Rights, Coard v. United States [Paras 52-59];
- Case No. 170, ICRC, Iran/Iraq Memoranda

- 4. 4. Judicial guarantees
  - Is an international tribunal “established by law”?

**See**

- Case No. 211, ICTY, The Prosecutor v. Tadic [Part A., paras 41-48]

- 5. Economic, social and cultural rights

**See**

Case No. 123, ICJ/Israel, Separation Wall/Security Fence in the Occupied Palestinian Territory [Part A., paras 130-134]

- ○ ■ Extent of protection in armed conflicts by IHL (health, work, education, etc.)
  - Interdependence and indivisibility of protection and assistance in armed conflicts

- 6. Collective rights

- Right to a healthy environment: protection of the environment in armed conflicts
- Right to self-determination: qualification of national liberation wars in IHL and consequences
- Right to peace: distinction between jus ad bellum and jus in bello

## 1. 5. Possible derogation

### See

- Case No. 164, Sudan, Report of the UN Commission of Enquiry on Darfur
- The hard core common to human rights and IHL

### See

- Case No. 157, Inter-American Commission on Human Rights, Coard v. United States [Para. 39]
- IHL expanding the non-derogable rights in armed conflicts

### See

- Case No. 192, Inter-American Commission on Human Rights, Tablada [Paras 168-170]
- ○ Gaps in situations of internal strife and tension and attempts to fill them: Minimum Humanitarian Standards

### See

- Document No. 55, Minimum Humanitarian Standards
- ○ The requirement that derogations must be consistent with other obligations under international law as a reference to IHL in armed conflicts
- See

- Case No. 192, Inter-American Commission on Human Rights, Tablada [Paras 168-170]

## 6. Mechanisms for implementation

### 2. Non-treaty-based

- Reference to IHL in resolutions of the former UN Commission on Human Rights and UN Human Rights Council, reports of country specific or thematic special rapporteurs, the Inter-American Commission on Human Rights, OSCE (Organization for Security and Co-operation in Europe) mechanisms

### See

- Case No. 20, The Issue of Mercenaries [Parts C and D.];
- Case No. 157, Inter-American Commission on Human Rights, Coard v. United States;
- Case No. 228, Case Study, Armed Conflicts in the Great Lakes Region [Paras 3.A.2) and

3.B.1)];

- Case No. 261, United States, Status and Treatment of Detainees Held in Guantanamo Naval Base [Parts C. and D.]

- Special rapporteurs of the former UN Commission on Human Rights and UN Human Rights Council on IHL topics

### 3. See

Case No. 261, United States, Status and Treatment of Detainees Held in Guantanamo Naval Base [Parts C. and D.]

- UN or OSCE human rights monitors and IHL

#### a. See

Case No. 228, Case Study, Armed Conflicts in the Great Lakes Region [Para. 3.D]

#### b. Treaty-based

- IHL in the discussions and decisions of the UN Human Rights Committee (incl. on individual communications from States Party to the First Optional Protocol to the International covenant on Civil and Political Rights), the UN Committee against Torture, the European Court of Human Rights, the European Committee against Torture, the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights and the African Commission on Human and Peoples' Rights

### See

- Case No. 151, ECHR, Cyprus v. Turkey;
- Case No. 154, Inter-American Court of Human Rights, Bámaca-Velasquez v. Guatemala;
- Case No. 192, Inter-American Commission on Human Rights, Tablada;
- Case No. 245, Human Rights Committee, Guerrero v. Colombia;
- Case No. 246, Inter-American Court of Human Rights, The Las Palmeras Case

- Coordination between the ICRC and the European Committee against Torture in and outside armed conflicts

### 3. 3. NGOs

- Reference to IHL and/or human rights by NGOs in armed conflicts

### 4. See

- Case No. 143, Amnesty International, Breach of the Principle of Distinction;
- Case No. 226, Federal Republic of Yugoslavia, NATO Intervention [Part A.];
- Case No. 228, Case Study, Armed Conflicts in the Great Lakes Region [Para. 2.B.];
- Case No. 261, United States, Status and Treatment of Detainees Held in Guantanamo Naval Base [Part A.];

- Case No. 274, Case Study, Armed Conflicts in Sierra Leone, Liberia and Guinea [Part 2.A];
- Case No. 280, Russian Federation, Chechnya, Operation Samashki;
- Case No. 286, The Conflict in Western Sahara [Part A.]

#### 4. ICRC

- The ICRC and human rights in and outside armed conflicts

### • 7. States as protectors and enforcers of human rights

#### 1. States, protectors of the rights of persons under their jurisdiction

##### See

- Case No. 227, ECHR, Bankovic and Others v. Belgium and 16 other States;
- Case No. 123, ICJ/Israel, Separation Wall/Security Fence in the Occupied Palestinian Territory [Part A., paras 107-112]

#### 2. International human rights law within domestic legal orders

- IHL national implementing legislation

##### See

- Case No. 63, Switzerland, Military Penal Code;
- Case No. 70, United States, War Crimes Act

#### 3. Judicial enforcement of IHL by domestic courts

##### See

- Case No. 81, United Kingdom, Interpreting the Act of Implementation;
- Case No. 82, United Kingdom, Labour Party Campaign – Misuse of the Emblem;
- Case No. 99, United States, Ex Parte Quirin et al.;
- Case No. 100, United States, Johnson v. Eisentrager;
- Case No. 101, United States, Trial of Lieutenant General Harukei Isayama and Others;
- Case No. 102, United States, In re Yamashita;
- Case No. 103, Burma, Ko Maung Tin v. U Gon Man;
- Case No. 104, The Netherlands, In re Pilz;
- Case No. 105, Singapore, Bataafsche Petroleum v. The War Damage Commission;
- Case No. 108, Hungary, War Crimes Resolution;
- Case No. 110, India, Rev. Mons. Monteiro v. State of Goa;
- Case No. 113, Malaysia, Public Prosecutor v. Oie Hee Koi;
- Case No. 114, Malaysia, Osman v. Prosecutor;
- Case No. 115, Belgium, Public Prosecutor v. G.W.;
- Case No. 117, United States, United States v. William L. Calley, Jr.;
- Case No. 120, Nigeria, Pius Nwaoga v. The State;
- Case No. 126, Israel, Military Prosecutor v. Kassem and Others;

- Case No. 132, Israel, Cases Concerning Deportation Orders;
- Case No. 152, Chile, Prosecution of Osvaldo Romo Mena;
- Case No. 155, Canada, Ramirez v. Canada;
- Case No. 158, United States, United States v. Noriega;
- Case No. 167, South Africa, Sagarius and Others;
- Case No. 168, South Africa, S. v. Petane;
- Case No. 169, South Africa, AZAPO v. Republic of South Africa;
- Case No. 195, Canada, Sivakumar v. Canada;
- Case No. 198, Belgium, Belgian Soldiers in Somalia;
- Case No. 199, Canada, R. v. Brocklebank;
- Case No. 222, United States, Kadic et al. v. Karadzic;
- Case No. 223, Switzerland, Military Tribunal of Division 1, Acquittal of G.;
- Case No. 238, France, Radio Mille Collines;
- Case No. 239, France, Dupaquier et al. v. Munyeshyaka;
- Case No. 241, Switzerland, The Niyonteze Case;
- Case No. 271, India, People's Union for Civil Liberties v. Union of India;
- Case No. 284, The Netherlands, Public Prosecutor v. Folkerts;
- Case No. 287, United States, United States v. Marilyn Buck

- ○ ■ Application of IHL by and in failed States
4. 4. Enforcement by States against violator States
    - IHL and humanitarian intervention
    - IHL and economic sanctions

a. **See**

Case No. 53, International Law Commission, Articles on State Responsibility [Part A., Art. 50, para. 7]

5. The obligation to ensure respect for IHL

a. **See**

Chapter 13. V, The obligation to ensure respect (common Article 1), Introductory text

6. 6. IHL conditions for humanitarian assistance

a. **See**

Chapter 9. IV, IHL and humanitarian assistance, Introductory text